



DEPARTMENT OF ENERGY

10 CFR Part 1021

Request for Information Regarding Categorical Exclusions

AGENCY: Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE) requests information to help inform potential updates to categorical exclusions in its regulations implementing the National Environmental Policy Act (NEPA). DOE is considering revisions to ensure that its NEPA reviews are aligned with the latest DOE programs and initiatives for clean energy and electricity transmission projects, fully consider potential environmental impacts and community concerns, and are efficient and effective at informing DOE decisions. Through this request for information, DOE seeks recommendations and supporting information from interested individuals and organizations on establishing new categorical exclusions and revising existing ones.

DATES: Responses should be submitted by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Responses to this request for information should be submitted to *doe-nepa-rulemaking@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: For further information on submitting responses, contact Carrie Abravanel, Office of NEPA Policy and Compliance (GC-54), (202) 586-8397, *Carrie.Abravanel@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: DOE is responsible for investing billions of taxpayer dollars in new or expanded efforts in the research and development, demonstration, and deployment of clean energy projects and clean energy infrastructure throughout the United States and its territories. DOE must comply with NEPA (42 U.S.C. 4321, *et seq.*) to inform its decisions about these actions, including decisions related to financial assistance (*e.g.*, grants, loan guarantees) to the private and public sector. DOE also must fulfill its responsibilities under other laws such as the National Historic Preservation Act and the Endangered Species Act. In addition, DOE is committed to providing meaningful and timely opportunities for engagement with local communities, Tribal Nations, and others potentially affected by its decisions.

Central to implementation of NEPA is the principle that the extent of analysis should be proportional to the potential for significant environmental impacts. Accordingly, the Council on Environmental Quality (CEQ) established three types of NEPA review: categorical exclusion, environmental assessment, and environmental impact statement. (*See e.g.*, 40 CFR parts 1501 and 1502.) An agency prepares an environmental assessment or environmental impact statement when the proposed action may result in significant environmental impacts, or the significance of potential impacts is unknown.

A categorical exclusion is a category of actions that a federal agency has determined, in its agency NEPA procedures, normally do not have a significant effect on the human environment (40 CFR 1508.1(d)). DOE's categorical exclusions are listed in appendices A and B to subpart D of its NEPA procedures (*10 CFR part 1021*). Actions that qualify for a categorical

exclusion do not require preparation of an environmental assessment or environmental impact statement.

A DOE proposal to establish or modify a categorical exclusion must be accompanied by technical support demonstrating why DOE has concluded that the category of actions normally does not pose the potential for significant environmental impacts. Once established in its procedures, before determining that a categorical exclusion applies to any particular proposed action, DOE evaluates whether that proposed action meets the conditions contained in the categorical exclusion and whether there are any extraordinary circumstances associated with the proposed action that pose the potential for significant environmental impacts. For more information on DOE's process for applying a categorical exclusion to a proposed action see 10 CFR 1021.410 and *Conditions That Are Integral Elements of the Classes of Action in Appendix B* at the start of appendix B to subpart D of DOE's NEPA procedures in *10 CFR part 1021*.

What information is DOE requesting?

The Infrastructure Investment and Jobs Act (aka, Bipartisan Infrastructure Law), the Inflation Reduction Act, the CHIPS and Science Act, and DOE's annual appropriations all provide funding for DOE to lead the nation's transition to a clean energy economy and improve the resilience of its energy infrastructure. DOE's website includes information on this funding, such as a general *web page on the Bipartisan Infrastructure Law, list of DOE programs funded by the Bipartisan Infrastructure Law, fact sheet on the Inflation Reduction Act, and statement regarding the CHIPS and Science Act*.

With respect to these laws and initiatives, DOE seeks information to help it identify activities associated with its furtherance of clean energy projects and clean energy infrastructure that should be considered for new or revised categorical exclusions. DOE requests that

interested parties:

- Identify a specific category of actions related to clean energy projects and clean energy infrastructure that is not covered by existing DOE categorical exclusions, but that is likely to meet the standard of not having a significant effect on the human environment; and
- Provide suggestions for revising DOE's existing categorical exclusions related to clean energy projects and clean energy infrastructure.

Along with the above information, interested parties should provide:

- (1) A brief explanation of the rationale for any suggested new categorical exclusions or revisions to the existing ones,
- (2) Any limits or conditions that should be included in the new or revised categorical exclusions to ensure that the category of actions normally does not pose the potential for significant environmental impacts, and
- (3) Technical or empirical support for the suggested changes to DOE's categorical exclusions.

How should information be provided?

Responses should be submitted to *doe-nepa-rulemaking@hq.doe.gov* by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Submitted information will be included in the public record of any associated rulemaking, should DOE decide to undertake revisions to its NEPA regulations.

Confidential Business Information: Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked

“confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signing Authority

This document of the Department of Energy was signed on November 8, 2022, by Samuel Walsh, General Counsel, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on November 9, 2022.

Treena V. Garrett,

Federal Register Liaison Officer,

U.S. Department of Energy.

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